



Paper No. 9

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In re Application of :
Robert Thompson et al :
Application No. 08/482,283 :
Filed: June 7, 1995 :
Attorney Docket No. 4189.0083-06000 :

ON PETITION

SUBSTITUTE DECISION

This is a substitute decision on the petition under 37 CFR 1.137(b), filed October 10, 1996, to revive the above-identified unintentionally abandoned application. The decision on petition mailed December 31, 1996 is vacated.

The petition is granted.

The Notice to File Missing Parts of Application (Notice) mailed August 17, 1995, set a period for response of one (1) month from the mail date of the Notice or two (2) months from the filing date of the application, whichever is later. A response was due on or before September 17, 1995. Extensions of time pursuant to the provisions of 37 CFR 1.136(a) could be obtained up to and including January 17, 1996.

The decision on petition mailed December 31, 1996 stated that, since this application became abandoned on September 18, 1995, the petition was untimely since it was not filed within one year of the date of abandonment. However, the petition under 37 CFR 1.137(b) includes a copy of a stamped return postcard which acknowledges receipt by the Patent and Trademark Office on January 17, 1996, of, *inter alia*, a petition for a four month extension of time and fee of \$1,400. The return postcard and the petition for extension of time both bear the incorrect application number.

Under current Office procedure, a response that has an incorrect application number is handled in accordance with MPEP 508.03. If a paper having an incorrect application number contains sufficient information to identify the correct application and was timely filed, the papers will be accepted as having been timely filed. In reviewing the copy of the previously mailed correspondence

submitted with the petition, it is concluded that the information contained thereon was sufficient to associate the correspondence with the instant application. Further evidence of the submission is evidenced by PTO PALM computer database finance records which disclose receipt of the \$750 filing fee, \$130 surcharge fee, \$1,400 extension fee, and \$130 petition fee, which fees were placed under the application number appearing on the correspondence, Application No. 08/482,238. These fees will be applied towards the instant application.

Since the response of January 17, 1996 to the Notice of August 17, 1995 was not responsive in that a declaration signed by all the inventors was not submitted, the date of abandonment of this application is January 18, 1996. In view thereof, the petition under 37 CFR 1.137(b) received October 10, 1996 was timely filed within one year of the date of abandonment. Since a signed declaration by all the inventors of record has now been received, the petition to revive under 37 CFR 1.137(b) is granted and the application is restored to pending status.

In view of the withdrawal of the request under 37 CFR 1.182 to convert the instant application from a 37 CFR 1.53 divisional application to a 37 CFR 1.60 divisional application, no further consideration of the petition to convert will be undertaken.

This application will be forwarded to the Initial Patent Examination Division for processing as a divisional application under 37 CFR 1.53 with a filing date of June 7, 1995.

Telephone inquiries concerning this matter may be directed to the undersigned at (703) 305-8680.



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